

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

|                                 |   |                       |
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| IN THE MATTER OF                | ) |                       |
|                                 | ) |                       |
| NORTH MANCHESTER FOUNDRY, INC., | ) | CASE NO. 01-35086 HCD |
|                                 | ) | CHAPTER 11            |
|                                 | ) |                       |
| DEBTOR.                         | ) |                       |

Appearances:

Yvette Gaff Kleven, Esq.; Chapter 11 Trustee, Skekloff, Adelsperger & Kleven, LLP, 927 South Harrison Street, Fort Wayne, Indiana 46802;

Douglas R. Adelsperger, Esq., counsel for the Trustee; Skekloff, Adelsperger & Kleven, LLP, 927 South Harrison Street, Fort Wayne, Indiana 46802;

Richard J. Swanson, Esq., counsel for United Steelworkers of America, Macey Swanson and Allman, 445 N. Pennsylvania Street, Suite 401, Indianapolis, Indiana 46204; and

David R. Jury, Esq., Assistant General Counsel for United Steelworkers of America, 5 Gateway Center, Room 807, Pittsburgh, Pennsylvania 15222.

MEMORANDUM OF DECISION

At South Bend, Indiana, on December 10, 2004.

Before the court are three motions: the Motion of the United Steelworkers of America (“USWA” or “Union”) for Reconsideration of Order Disallowing Administrative Claim; USWA’s Motion to Reconsider Order Approving Distribution on Administrative Claims; and the Chapter 11 Final Report and Application to Close Case and Motion for Final Decree filed by Chapter 11 Case Trustee Yvette Gaff Kleven. An evidentiary hearing on the three matters was held on December 1, 2004. At the conclusion of the hearing on these matters, the court denied the USWA’s two motions for reconsideration, upheld the court’s Orders of September 2, 2004, and approved the Trustee’s Final Report. The reasons underlying those determinations are discussed in this written Memorandum of Decision.

### Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and determination. After reviewing the record, the court determines that the matter before it is a core proceeding within the meaning of § 157(b)(2)(B) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, made applicable in this proceeding by Federal Rule of Bankruptcy Procedure 9014. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

### Background

On September 2, 2004, the court issued two orders in this case. In its first Order, the court determined that the USWA had failed to file a Motion for Allowance of Administrative Claims on or before March 15, 2004, as required by the court's Notice to All Creditors of February 12, 2004. It disallowed the USWA's Proof of Claim for Administrative Expenses on the grounds that it was not filed in the form of a motion, had not been filed properly as a motion by the bar date, and had not been served properly on all creditors and parties in interest. In addition, it sustained the Trustee's objection to USWA's Amended Notice of Motion and Opportunity to Object. In its second Order of September 2, 2004, the court reiterated that it had disallowed the USWA's Proof of Claim by separate order. It then approved the Trustee's Amended Report to the Court, overruled the USWA's Objection to the report, and authorized the Trustee to pay administrative claims pro rata as set forth in her Amended Report. The USWA has asked the court to reconsider those Orders of September 2, 2004.

The parties do not challenge any facts in the record; in fact, they filed a set of 42 stipulated exhibits from the record at the evidentiary hearing. The court therefore reviews the underlying material facts that led to

its two Orders of September 2. It begins with the “Notice to All Creditors” of February 12, 2004, which was served on all creditors and parties in interest by the debtor and the Chapter 11 Trustee. The Notice stated:

YOU ARE HEREBY NOTIFIED that any party seeking allowance of administrative claims shall file a Motion for Allowance of Administrative Claim on or before March 15, 2004. This Notice establishes the Claims Bar Date of administrative claims and any administrative claim not so filed by the aforesaid date shall be disallowed as untimely. Motions for Allowance of Administrative Claim must be submitted to [the clerk of the United States Bankruptcy Court] with a copy to [the Trustee].

Stip. Exs. 1, 2. On March 15, 2004, the Union filed its “Proof of Claim for Administrative Expenses on Behalf of United Steelworkers of America, AFL-CIO-CLC.” Stip. Ex. 3. When no action had been taken for sixty days, the court issued an Order to Show Cause.<sup>1</sup> See Stip. Ex. 4. On June 14, 2004, the USWA responded that it had filed its “Application for Payment of Administrative Expenses” on March 15, 2004, and that it “had been engaged in collecting the evidence necessary to prove up its administrative claim” since that date. Stip. Ex. 6. On June 23, 2004, the Union filed its “USWA’s Notice of Motion and Opportunity to Object,” stating that it had filed a “Motion for Allowance of Administrative Claim” on March 15, 2004, and “ask[ing] the court to approve and authorize payment of the Motion.”<sup>2</sup> Stip. Ex. 11. The notice was sent to the parties. On July 12, 2004, the USWA filed another Notice of Filing and sent the Notice of Motion and Opportunity to Object to an attached list of creditors. See Stip. Ex. 18.

The Trustee filed her “Response to USWA’s Notice of Motion and Opportunity to Object” on July 16, 2004. See Stip. Ex. 22. She presented a list of reasons for requesting that the court deny the USWA’s Proof

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<sup>1</sup> The Order to Show Cause stated:

During the last sixty (60) days, no action has been taken with regard to the Proof of Claim (Motion) for Administrative Expenses on Behalf of United Steelworkers of America, AFL-CIO-CLC filed by David R. Jury . . . on March 15, 2004. Movant is therefore ordered to show cause, in writing, within twenty-one (21) days of this date, why the Proof of Claim (Motion) for Administrative Expenses on Behalf of United Steelworkers of America, AFL-CIO-CLC should not be dismissed due to the lack of prosecution. See N.D. Ind. L.B.R. B-7041-1.

Stip. Ex. 4 (Order of May 24, 2004).

<sup>2</sup> The USWA stated in its brief that it was “acting on the suggestion of the Clerk’s Office that the USWA’s Administrative Claim had to be notice[d] to be scheduled on this Court’s docket.” R. 622 at 2.

of Claim for Administrative Expense: (1) The USWA filed a Proof of Claim, not a Motion for Allowance of Administrative Claim; (2) the Notice of June 23, 2004, was not served on all creditors and parties in interest and was defective (because it did not state an amount requested); (3) the Notice of July 12, 2004, was not served on all creditors and parties in interest and did not provide 20 days for creditors to respond; (4) the Proof of Claim itself was defective (because it did not state a specific amount owing) and the Trustee disputed the unliquidated amounts; (5) the Trustee questioned the USWA's standing to file a proof of claim on behalf of the debtor's employees after the collective bargaining agreement had been rejected; and (6) many employees filed claims which appear to be duplicative of the USWA's proof of claim.

In response, on July 20, 2004, the USWA filed an Amended Notice of Motion and Opportunity to Object, with service on all counsel of record, creditors and parties in interest. *See* Stip. Exs. 23, 24 (with incorrect date), 25 (corrected). Two days later, the Trustee filed her "Objection to USWA's Amended Notice of Motion and Opportunity to Object." *See* Stip. Ex. 26. The Trustee asked the court to find that the Amended Notice was defective and that the proof of claim be disallowed for numerous reasons. It first objected that the Amended Notice did not comply with the local rules, which require that the Notice state the name of the Motion and date upon which it was filed. It pointed out that the Amended Notice stated that a "Motion" had been filed, but in fact a "Proof of Claim" had been filed. It also noted that the Notice did not state the amount of the claim or the ground for the motion and did not attach a copy of the motion. Indeed, the USWA still had not filed a "Motion to Allow Administrative Claim," as the court's Notice of February 12, 2004, required. The Trustee reiterated the defective elements of the USWA's June 23 and July 12, 2004 notices and of the Proof of Claim itself. It also challenged the USWA's standing to file a proof of claim on behalf of the debtor's employees after the collective bargaining agreement had been rejected and after many employees had filed their own claims. *See* Stip. Ex. 26 at 3. The "USWA's Response to Trustee's Objection" stated that it was in the process of obtaining personnel records to ascertain the unliquidated amounts in the administrative claim and that it still had standing to represent the employees. *See* Stip. Exs. 27, 28.

In the meantime, on June 17, 2004, the Trustee filed her Report to the Court. *See* Stip. Ex. 8. She listed the administrative claims that were properly filed, noticed to all creditors, and approved by the court. The USWA claim was not on the list. Because the sum she held (\$329,542.95) was less than the total amount of the claims (\$368,955.43), the Trustee proposed to pay the claims pro rata. *See id.* at 2. On June 23, 2004, the Trustee filed her Amended Report to the Court, adding the fees of the United States Trustee and presenting \$370,455.43 in court-approved administrative claims. *See* R. 581.

The court held a telephonic preliminary pre-trial conference on September 1, 2004. It discussed the Trustee's Amended Report to the Court, the USWA's Notice of Motion and Opportunity to Object, and the Trustee's Response. The court's Orders of September 2, 2004, disallowing the USWA's Proof of Claim for Administrative Expenses and approving the Trustee's Amended Report, are the subjects of the USWA's Motions for Reconsideration. The USWA filed its Motions and briefs on September 13, 2004. After the court's pre-trial conference on September 23, 2004, and time for the Trustee's response, the court ordered an evidentiary hearing to be held December 1, 2004.

At the hearing on those motions to reconsider and the Trustee's Final Report, the court admitted the parties' stipulated exhibits. It then focused the hearing on the pivotal issue, the motion to reconsider the court's order disallowing the USWA's administrative claim. Following opening statements by Union attorney Swanson and Trustee counsel Adelsperger, the court heard evidence from David Jury, Assistant General Counsel for the USWA, the attorney who filed the administrative claim that had been disallowed by the court. Mr. Jury testified that he is a labor lawyer who has been employed by the USWA for 8 1/2 years. He has supervised the Union's bankruptcy practice throughout the country. He stated that he did receive the court's Notice of February 12, 2004, requiring parties seeking administrative claims to file a motion by March 15, 2004. Acting upon the notice on that final date of March 15, he filed a proof of claim rather a motion. Mr. Jury stated that, in his experience in other bankruptcy courts, the filing of a "Proof of Claim for Administrative Expenses" was sufficient to comply with the bar date notice. He stated that he had filed a proof of claim four or five other times, in other bankruptcy

courts, and that those requests for administrative payments had not been rejected because of his use of a proof-of-claim format.

After filing the proof of claim, Mr. Jury stated, the court required him to file a formal written appearance and a motion to appear *pro hac vice*, and he timely complied. *See* R. 466, 477. When the court issued its Order to Show Cause<sup>3</sup> on May 24, 2004, requiring the USWA to explain in writing “why the Proof of Claim (Motion) for Administrative Expenses . . . should not be dismissed due to lack of prosecution,” he complied by stating that he had been “collecting the evidence necessary to prove up its administrative claim.” Stip. Exs. 4, 6. Mr. Jury testified that, because the court had used the term “motion” in parentheses, he believed that the court was treating his proof of claim as a motion. He further stated that, when the Trustee pointed out the defects in the USWA’s Notice of Motion and Opportunity to Object, he amended the notice and fully served all creditors and parties in interest. *See* Stip. Exs. 11, 18, 22, 23, 24, 25, 26, 27.

Mr. Jury reported that, on September 1, 2004, the court held a pre-trial conference to consider the USWA’s Notice of Motion and Opportunity to Object, the Trustee’s Amended Report to the Court regarding the payment of administrative claims, and each party’s objections. After hearing the positions of counsel, the court stated that it would disallow the USWA’s administrative claim. On September 2, 2004, it issued two Orders. *See* Stip. Exs. 31, 32. One Order sustained the Trustee’s Objection and disallowed the USWA’s Proof of Claim for Administrative Expenses. The other Order overruled the USWA’s objection and approved the Trustee’s Amended Report. The USWA then filed motions to reconsider those Orders, Mr. Jury stated. Each motion asserted that the USWA’s “failure to file a Rule 9014 motion for approval of its Administrative Claim was

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<sup>3</sup> The Order to Show Cause cited to the court’s Local Rule B-7041-1, which states:

Any contested matter or adversary proceeding in which no action has been taken for a period of sixty (60) days may be dismissed due to the lack of prosecution, with judgment for costs, if any, following twenty-one (21) days notice given by the court to counsel of record . . . unless, for good cause shown, the court orders otherwise.

N.D. Ind. L.B.R. B-7041-1.

unintentional and inadvertent and based on counsel's understanding that the Administrative Claim was in a form sufficient to comply with applicable rules governing the presentation of an administrative claim." Stip. Exs. 33 at 8, 35 at 8. He asked the court to treat the USWA's procedural failure as the result of excusable neglect.

On cross examination, Mr. Jury admitted that he had received the notice requiring that a motion be filed, that he did not review the court's local rules, that he did not ask local counsel about local procedures, and that he did not seek a stay of the Orders of September 2, 2004. He also agreed that the court, by its decisions, had concluded that the USWA's proof of claim should not be interpreted as a motion.

After the USWA rested, the Trustee asked for the involuntary dismissal of the USWA's motions for reconsideration, under Federal Rule of Civil Procedure 41(b), on the ground that the Union failed to put forth any evidence showing that the court should reconsider its Orders. The Trustee contended that Mr. Jury's only reason for reconsideration was that the Union had filed an administrative claim in the form of a proof of claim in other courts in the past – but not in this particular court, he pointed out. The USWA responded that its use of a proof of claim rather than a motion was excusable neglect. It noted that neither the Bankruptcy Code nor the Rules presents a standard form for filing requests for an administrative claim. The Union pointed out that it did file a proof of claim timely and that the court itself caused confusion by referring to the filing as a "motion" in its show-cause order. Moreover, it asserted, there would be considerable prejudice to the USWA bargaining members if the claim were disallowed. In the view of the USWA, it has passed the threshold for dismissal under Rule 41 and its motions should not be dismissed.

The court reviewed the Trustee's motion to dismiss the USWA's motions for reconsideration in open court. It first broadly commended union attorneys that had appeared over the years before this court, including Mr. Jury, for being among the most well prepared and intelligent advocates for their clients. Nevertheless, after considering the parties' pre-trial briefs, the USWA's witness at the hearing, the parties' arguments and the record in full, the court sustained the Trustee's motion to dismiss. The court made specific findings of fact. It found that the Union did not comply with the court's local procedures. In particular, the USWA failed to file its request in

the form of a motion, despite the clear language in the court's Notice of February 12, 2004, and despite the show cause order's parenthetical reference to the required motion format. It also found that the USWA's witness admitted the procedural mistakes. No exhibit and no testimony refuted the mistakes or explained them as excusable neglect, the court noted. It determined that those errors had foreclosed the Union from receiving an administrative claim. It further pointed out that it was not necessary, in the court's view, that the Trustee present more evidence, through her testimony at the hearing, than the evidence she had presented in her written objection and other documents. After stating that a more expansive written opinion would issue, the court denied the USWA's two motions to reconsider and upheld the court's Orders disallowing the administrative claim of the USWA and overruling the USWA's objection to the Trustee's Amended Report. It also approved the Trustee's final report.

#### Discussion

At the outset, the court construed the USWA's Motions for Reconsideration to be motions to alter or amend a judgment pursuant to Federal Rule of Bankruptcy Procedure 9023, which makes applicable Federal Rule of Civil Procedure 59(e) in bankruptcy cases. Rule 59(e) states that "any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment." The USWA's motions were filed within ten days of entry of the judgment (excluding intervening Saturdays and Sundays) and they challenged the correctness of the determinations in the court's Orders of September 2, 2004. The underlying facts are uncontested; the USWA's position is that its use of a "Proof of Claim for Administrative Expenses" rather than a "Motion for Allowance of Administrative Claim" in requesting an administrative claim was excusable neglect.

There is no bankruptcy rule or section of the Bankruptcy Code that establishes the method for requesting an administrative claim. Section 503, which governs requests for administrative expenses, provides that "[a]n entity may timely file a request for payment of an administrative expense, or may tardily file such a request if permitted by the court for cause." 11 U.S.C. § 503(a). The legislative history reflects that Congress



intended that “the Rules of Bankruptcy Procedure will specify the time, the form, and the method of such a filing.” *Hall Fin'l Group, Inc. v. DP Partners Ltd. P'ship (In re DP Partners Ltd. P'ship)*, 106 F.3d 667, 672 and n.17 (5th Cir.), *cert. denied*, 522 U.S. 815 (1997) (quoting S. Rep. No. 989, 95th Cong., 2d Sess. 66 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5852; H.R. Rep. No. 595, 95th Cong., 1st Sess. 355 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6311). “The Rules of Bankruptcy Procedure, in turn, largely defer that duty to the bankruptcy judges.” *In re DP Partners*, 106 F.3d at 672. Although courts provide an official form for filing a proof of claim, there is no official form for a request for payment of an administrative expense.<sup>4</sup> It is well understood that the filing of a proof of claim is not a substitute mechanism for requesting an administrative claim.

An application for payment of an administrative expense should not be labeled as a “proof of claim.” An application for payment of an administrative expense is not properly asserted in a proof of claim, and the filing of proof of claim is unnecessary to request payment of an administrative expense; the application for payment filed under section 503(a) is all that is required.

4 Collier on Bankruptcy ¶ 503.02[1] at 503-7, 503-8 (Alan N. Resnick and Henry J. Sommer, eds. in chief, 15th ed. rev'd 2004); *see also In re Lykes Bros. Steamship Co., Inc.*, 221 B.R. 881, 883 (Bankr. M.D. Fla. 1997); *Security Ins. Corp. v. First Century Corp. (In re First Century Corp.)*, 166 B.R. 47, 48-49 (Bankr. M.D. Pa. 1994).<sup>5</sup> “A Motion for allowance of an administrative expense is therefore the only proper vehicle to assert such a claim, and not by filing a proof of claim.” *In re Bicoastal Corp.*, 147 B.R. 258, 260 (Bankr. M.D. Fla. 1992).

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<sup>4</sup> The court notes that Official Form No. 10, the official proof of claim form, provides: “This form should not be used to make a claim for an administrative expense arising after the commencement of a case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.” Several courts thus have held that the filing of a proof of claim is not a substitute for a request for administrative payment. *See, e.g., In re First Century Corp.*, 166 B.R. 47, 48 (Bankr. M.D. Pa. 1994); *In re Bicoastal Corp.*, 147 B.R. 258, 260 (Bankr. M.D. Fla. 1992); but cf. *In re Sage Richmond, L.L.C.*, 285 B.R. 364, 365 (Bankr. E.D. Va. 2002) (allowing an administrative claim to be filed as a proof of claim).

<sup>5</sup> It is noteworthy that, in *In re First Century Corp.*, the bankruptcy court had issued an order, at the request of the Unsecured Creditors' Committee, requiring that parties seeking an administrative expense claim file a “Proof of Claim.” In its written opinion, the court recognized that the “filing of a Proof of Claim is not a substitute for a request for administrative payment.” 166 B.R. at 48. Admitting its mistake in requiring a proof of claim form, it overruled the objections and allowed the administrative claims submitted on those forms. *See id.* at 49.

In this case, the court clearly specified and required, in its Notice of February 12, 2004, “that any party seeking allowance of administrative claims shall file a Motion for Allowance of Administrative Claim on or before March 15, 2004.”<sup>6</sup> Mr. Jury testified that he received the court’s notice. Both in its briefs and through the candid and credible testimony of Mr. Jury, the USWA admitted that it did not follow that explicit direction and instead filed a proof of claim rather than a motion. The court determines, therefore, that the USWA’s “Proof of Claim” was improper and insufficient as an application for payment of an administrative expense.

The USWA asserted, however, that any deviation from the requisite form was excusable neglect. Relying on *Pioneer Investment Services Co. v. Brunswick Associates Ltd.. Partnership*, 507 U.S. 380, 113 S. Ct. 1489, 123 L.Ed.2d 74 (1993), which held that “[t]he determination [of excusable neglect] is at bottom an equitable one taking account of all relevant circumstances surrounding the party’s omission,”*id.* at 395, 113 S. Ct. at 1498, the Union contended that there was no evidence that its failure to file a motion was an act of bad faith. It was merely an unintentional mistake, it contended, but one that would cause clear prejudice to the bargaining unit members employed by the debtor, in light of their valid post-petition compensation claims, if the administrative claim is disallowed. The USWA requested that the court reconsider its order disallowing the USWA’s administrative claim and that it treat the claim as a motion or permit the USWA to amend its administrative claim to comply with the court’s requirements.

Prior to the hearing, this court considered the USWA’s excusable neglect contentions in light of the USWA briefs and the record in the case. It was guided by the Supreme Court’s factors in an excusable neglect determination<sup>7</sup> and the analysis of excusable neglect in such recent decisions of the Seventh Circuit Court of

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<sup>6</sup> Section 503(b) provides that administrative expenses shall be allowed after notice and a hearing. The Local Rules of the United States Bankruptcy Court for the Northern District of Indiana state that applications for administrative expenses, like many motions, require notice of and the opportunity to object. If no objection is raised, however, the court will consider certain motions, including one for administrative expenses, without holding a hearing. *See* N.D. Ind. L.B.R. B-2002-2.

<sup>7</sup> In *Pioneer Inv. Services*, the Supreme Court stated that the “guideposts for determining what sorts of neglect will be considered ‘excusable’” include these factors:

(continued...)

Appeals as *In re Kmart Corp.*, 381 F.3d 709 (7th Cir. 2004), *petition for cert. filed*, \_\_ U.S.L.W. \_\_ (U.S. Nov. 24, 2004) (No. 04-725), and *In re Outboard Marine Corp.*, 386 F.3d 824 (7th Cir. 2004). The court found that the delay in this case was caused not by the USWA's untimely filing, since a filing on the final bar date still is timely, but by its decision to file a "proof of claim" rather than a "motion." In general, the court made expeditious determinations regarding other administrative claims that had been filed as motions. The USWA's claim, however, created considerable court supervision: for example, orders requiring that its counsel file an appearance and appear *pro hac vice*, an order to show cause, numerous orders concerning production of documents, pretrial conferences and an evidentiary hearing. The USWA made amendments to its documents over the course of several months, but never filed a "Motion for Allowance of Administrative Claim" with appropriate notice and service. The court found that the delay had an impact on its own court management and on the Trustee's ability to finalize the debtor's Chapter 11 Plan of Liquidation, which had been confirmed on February 2, 2004.<sup>8</sup> It also found that the delay was entirely within the control of the USWA. *See In re Kmart*, 381 F.3d at 715 (finding that "fault in the delay is the preeminent factor in the *Pioneer* analysis" and that the untimely filing of the creditor's proof of claim "was her own fault").

In evaluating whether the USWA acted in good faith, the court took into consideration the Union's attempts to remedy its inadvertent mistakes. Although it did not find that the USWA acted in bad faith, it believed that the USWA did not make a diligent effort to follow the simple procedures set forth by this court. *See In re Kmart*, 381 F.3d at 716 (finding that the creditor's attempt to file on time was not extraordinary or even

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<sup>7</sup>(...continued)

the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was in the reasonable control of the movant, and whether the movant acted in good faith.

*Id.*, 507 U.S. at 395, 113 S. Ct. at 1498).

<sup>8</sup> The court also noted that the size of the USWA's potential administrative expense claim – which specified a fixed amount greater than \$104,000 and claimed possible additional contingent amounts – was significant to the Trustee and to administrative claimants, because it would decrease the pro rata distribution to other claimants if it were allowed.

particularly diligent). It noted that the USWA is a sophisticated claimant and is represented by counsel with years of bankruptcy experience. The differences between proofs of claim and administrative claims are basic to bankruptcy practitioners. The Notice to All Creditors made clear that those who seek allowance of an administrative claim were required to file a Motion for Allowance of Administrative Claim. The Notice did not provide any other filing methods. However, the USWA chose not to follow those instructions. *Cf. In re Outboard Marine Corp.*, 386 F.3d 824, 828 (7th Cir. 2004) (affirming the bankruptcy court's conclusion that the Notice of Bar Date governed the filing of claims and that a faxed proof of claim was improper and untimely). Its claim that other courts did not refuse his improperly filed proofs of claim is a weak defense, in light of the case law and bankruptcy treatises criticizing that procedure. Its suggestion that this court misled the Union into believing that it had accepted the proof of claim, by referring to it parenthetically as a "motion" in the Order to Show Cause, likewise is a slender thread on which to hang a defense. The court had told creditors to file a "Motion for Allowance of Administrative Claim" in its Notice of February 12, 2004, and told the USWA again in its Show Cause Order that no action had been taken on its Proof of Claim and that it expected the creditor to file a Motion and to comply with the notice requirements and time limits established for contested matters.

At the hearing, the court considered the evidence tendered, the testimony of Mr. Jury, and the arguments of counsel. It was clear, from the opening statements and throughout the hearing, that the Union admitted its mistakes and relied on its assertion that the mistakes were the result of excusable neglect. By the end of the Union's case in chief, however, the court found that the Union had offered no acceptable reasons to consider its neglect excusable under the factors set forth in *Pioneer*. The record was devoid of evidence of excusable neglect and Mr. Jury's testimony did not present additional evidence to support the claim of excusable neglect. The court found no evidence that the USWA's mistake in failing to file the claim in the form of a motion was attributable to any entity other than the Union. The court therefore determined, in open court, that the USWA's filing of a proof of claim was not sufficient as a request for an administrative expense and was not the

result of excusable neglect. Consequently, the court denied the USWA's motions for reconsideration of the September 2, 2004 Orders that disallowed the USWA's "Proof of Claim" as an administrative claim.

The court must address one final matter, the Trustee's request for involuntary dismissal under Federal Rule of Civil Procedure 41(b). The court treated the request as a motion for judgment on partial findings under Federal Rule of Civil Procedure 52(c), made applicable to these proceedings by Rule 7052, rather than a motion under its precursor, Rule 41(b).<sup>9</sup> See, e.g., *Premier Capital Funding, Inc. v. Earle (In re Earle)*, 307 B.R. 276, 288 n.5 (Bankr. S.D. Ala. 2002).

Fed.R.Civ.P. 52(c) (applicable herein pursuant to Fed. R. Bankr.P. 7052) provides that if during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court can enter a judgment at that time or wait until close of the evidence. The court has the prerogative "to weigh the evidence, resolve any conflicts in it, and decide for itself where the preponderance lies." The court may even assess the credibility of witnesses. If a Rule 52(c) motion is granted at the close of Plaintiff's evidence, "the court then must give judgment on the merits for the movant and make findings of fact as provided by Rule 52(a)."

*Herzog v. Leighton Holdings, Ltd. (In re Kids Creek Partners, L.P.)*, 212 B.R. 898, 926-27 (Bankr. N.D. Ill. 1997) (citations omitted).

At the conclusion of the USWA's evidence, after it rested, the Trustee moved for a judgment on partial findings on the USWA's motions to reconsider. She argued that the USWA, which carried the burden of proving that the court should reconsider the decisions rendered in the Orders of September 2, 2004, had failed in its burden. The court had considered the USWA's motions and accompanying briefs, had reviewed the record in detail, and had heard the testimony of the USWA's witness at the hearing. It allowed further argument by the parties before ruling on the Trustee's motion. It then determined that the Union had not demonstrated that its neglect was excusable, under the criteria established by the Supreme Court in *Pioneer*, and thus that the Union's evidence and arguments did not provide a basis for altering its previous Orders.

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<sup>9</sup> On December 1, 1991, the procedure that had been established in Rule 41(b), authorizing a court to render judgment on the merits for the defendant at the close of the plaintiff's evidence in a bench trial, was removed from Rule 41(b) and moved in substance to Rule 52(c). See *In re 599 Consumer Electronics, Inc.*, 195 B.R. 244, 247 n.3 (S.D.N.Y. 1996) (citing the Advisory Committee Note to Amendment of Rule 52, 134 F.R.D. 525, 690 (1991)).

Conclusion

For the reasons presented above, the court denies the Motion of the United Steelworkers of America for Reconsideration of Order Disallowing Administrative Claim and the USWA's Motion to Reconsider Order Approving Distribution on Administrative Claims. It approves the Chapter 11 Final Report and Application to Close Case and grants the Motion for Final Decree filed by Chapter 11 Case Trustee Yvette Gaff Kleven.

SO ORDERED.



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HARRY C. DEES, JR., CHIEF JUDGE  
UNITED STATES BANKRUPTCY COURT